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FEB 27 1997

MMPPP
PROCLTR 97-07

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

SUBJECT: Application of the Berry Amendment

The attached memorandum from the Director, Defense Procurement provides revised DFARS coverage implementing changes to the Berry Amendment enacted as Section 8109 of PL 104-208, National Defense Appropriations Act for Fiscal Year 1997.

This PROCLTR is effective immediately and expires one year after its issue date or upon publication of the DFARS changes in a forthcoming DAC, whichever occurs first. Point of contact for this PROCLTR is Hal Hermann, DSN 427-1354.

Attachment


ROBERT L. MOLINO
Executive Director
(Procurement)





ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

February 7, 1997



DP (DAR)

In reply refer to
DFARS Case: 96-D333
D. L. 97-009

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN(RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA(RD&A)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS
AGENCY

SUBJECT: Application of Berry Amendment

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8109 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208). Section 8109 provides that in applying the Berry Amendment (10 U.S.C. 2241 note), the term "synthetic fabric and coated synthetic fabric" shall be deemed to include all textile fibers and yarns that are for use in such fabrics; and that the restrictions of the Berry Amendment shall apply to contracts and subcontracts for the procurement of commercial items.

The attached interim DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir



**DFARS Case 96-D333,
Application of Berry Amendment
Interim Rule**

PART 212—ACQUISITION OF COMMERCIAL ITEMS

**SUBPART 212.5—APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF
COMMERCIAL ITEMS**

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

- (a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components:
 - (i) ~~10 U.S.C. 2241 note, Limitations on Procurement of Food, Clothing, and Specialty Metals Not Produced in the United States~~[Reserved].

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PART 225--FOREIGN ACQUISITION

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**SUBPART 225.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER
STATUTORY RESTRICTIONS ON FOREIGN ACQUISITION**

225.7002 Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools.

225.7002-1 Restrictions.

- (a) In accordance with Section ~~9009~~[9005] of Pub. L. ~~401-165~~ and similar sections in subsequent Defense appropriations acts [102-396, as amended (10 U.S.C. 2241 note, Limitations on Food, Clothing, and Specialty Metals Not Produced in the United States), and Section 8109 of Pub. L. 104-208], do not acquire supplies consisting in whole or in part of any of the following, that have not been grown or produced in the United States or its possessions—

- (7) Synthetic fabric or coated synthetic fabric[, including all textile fibers and yarns that are for use in such fabrics];

- (9) Any item of individual equipment [(Federal Supply Classification 8465)]
manufactured from or containing any of the listed fibers, yarns, fabrics, or materials.

* * * * *

225.7002-2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in 225.7002-1—

* * * * *

- (e) Acquisitions ~~using~~ [not exceeding the] simplified acquisition ~~procedures~~ [threshold].

* * * * *

(j) ~~Commercial items or components purchased by contractors from subcontractors/suppliers.~~
[Purchases of fibers and yarns that are for use in synthetic fabric or coated synthetic
fabric, if such fabric is to be used as a component of an end item not classified in Federal
Supply Group 83, Textile/ leather/ furs/ apparel/ findings/ tents/ flags, or Federal
Supply Group 84, Clothing, Individual Equipment and Insignia.]

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PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

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**[SUBPART 244.4—SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL
COMPONENTS**

244.403 Contract clause.

Use the clause at 252.244-7000, Subcontracts for Commercial Items and Commercial
Components (DoD Contracts), in solicitations and contracts for supplies or services other than
commercial items, that contain the clause at 252.225-7014, Preference for Domestic Specialty
Metals, Alternate I.]

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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**252.212-7001 Contract Terms and Conditions Required to Implement Statutes or
Executive Orders Applicable to Defense Acquisitions of Commercial Items.**

As prescribed in 212.301(f)(iii), use the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR
EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL
ITEMS (JAN[FEB] 1997)

* * * * *

[(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and
Conditions Required to Implement Statutes or Executive Orders—Commercial Items
clause of this contract, the Contractor shall include the terms of the following clause, if

applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014, Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).}

252.225-7012 Preference for Certain Domestic Commodities.
As prescribed in 225.7002-3(a), use the following clause:

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (NOV 1995[FEB 1997])

- (a) The Contractor agrees to deliver under this contract only such of the following articles that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico—

- (7) Synthetic fabric, and coated synthetic fabric[, including all textile fibers and yarns that are for use in such fabrics];

- (10) Any item of individual equipment [(Federal Supply Classification 2465)] manufactured from or containing such fibers, yarns, fabrics, or materials.

- (b) This clause does not apply—

- (4) To ~~commercial items or components purchased from subcontractors or suppliers~~
[purchases of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric, if such fabric is to be used as a component of an end item not classified in Federal Supply Group 83, Textile/ leather/ furs/ apparel/ findings/ tents/ flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia.]

252.225-7014 Preference for Domestic Specialty Metals.
As prescribed in 225.7002-3(b), use the following clause:

PREFERENCE FOR DOMESTIC SPECIALTY METALS (NOV 1995[FEB 1997])

- (c) This clause does not apply to the extent that—

- (4) The specialty metal is ~~contained in a commercial item or component purchased from subcontractors or suppliers~~[purchased by a subcontractor at any tier].

{End of clause}

ALTERNATE I (~~DEC 1994~~ [FEB 1997])

As prescribed in 225.7002-3(b), ~~use the basic clause with~~ [substitute the following paragraph (c) for paragraph (c) of the basic clause, and add] the following paragraph (d) [to the basic clause]:

[(c) This clause does not apply to the extent that—

- (1) The Secretary or designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired when needed at U.S. market prices;
- (2) The acquisition is for an end product of a country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement; or
- (3) The acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources to offset sales made by the U.S. Government or U.S. firms under approved programs.]

(d) The Contractor agrees to include [the terms of] this clause, including this paragraph (d), in every subcontract or purchase order [awarded under this contract] unless the item being purchased contains no specialty metals.

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[252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts).

As prescribed in 244.403, use the following clause:

**SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS
(DOD CONTRACTS) (FEB 1997)**

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items and Commercial Components clause of this contract, the Contractor shall include the terms of the following clause, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014, Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

(End of clause)]